

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

*PL-1  
Shipman  
119288*

**FILE:** B-205283.2

**DATE:** August 24, 1982

**MATTER OF:** Target Corporation

**DIGEST:**

1. Where IFB provided for waiver of first article requirements for companies which had previously furnished "identical," "substantially identical" or "identical or similar" products to the Government, waiver was not limited to prior acceptance of identical items only.
2. For timely filing of protest under section 21.2(b)(2) of our Bid Protest Procedures, bidder, which has construed provisions of IFB differently than agency, is not charged with knowledge of basis of protest until it has knowledge of agency's construction of provisions.
3. IFB must be construed as a whole, giving effect to every word, clause or sentence, including "Boiler plate" provisions.

Target Corporation (Target) protests the award of a contract to Clifton Precision (Clifton) under invitation for bids (IFB) N00189-81-B-0116 issued by the Naval Supply Center, Norfolk, Virginia (Navy), for a quantity of kits consisting of Field Change 8 for AN/SPA-66 Digital Range Strokes.

We deny the protest.

The IFB provided for first article testing and for waiver of first article testing. All bidders were required to submit a bid based on first article test requirements and bidders had the option of submitting an alternate bid based on waiver of first article test requirements in accordance with Defense Acquisition Regulation (DAR) § 1-1903(a) (1976 ed.).

Clause L0003.1, Instructions, of the IFB provided that if "identical" supplies have been previously accepted, first article testing requirements may be waived and required the bidder to identify the contracts under which "identical or substantially identical" supplies were furnished. Clause M108, under Evaluation Factors, provided that where "identical or similar" supplies to those called for in the solicitation have been furnished and accepted, the contracting officer may waive the requirements for first article approval.

Bids were received only from Target and Clifton. Construing the IFB to limit waiver of first article requirements to the prior satisfactory production of "identical" supplies, Target did not bid on waiver of the first article requirement, but submitted a bid only on the basis of first article testing. Clifton, on the other hand, construed the IFB to permit waiver if similar supplies had been previously accepted by the Government and bid on the basis of the waiver. Apparently, only one other company, which did not submit a bid, had previously furnished to the Government the identical supplies. Both Target and Clifton had previously furnished "similar," but not "identical," supplies. Based on first article requirements, the bid of Target was low but Clifton's bid was low based on the waiver of first article requirements.

Informal discussions with the agency left Target with the impression that the agency intended to waive first article requirements and, by letter of November 16, 1981, to the contracting officer, Target inquired whether the Navy intended to waive first article requirements for Clifton, indicated an intent to protest and set forth the grounds of its protest to a first article waiver. Before any response was made by the Navy, Target filed this protest with our Office.

Target contends that the solicitation limits waiver to "identical" supplies previously furnished to and accepted by the Government, referred to by Target as "Chinese" copies, and Clifton has not previously furnished "identical" supplies. Further, Target argues that the provisions in the Evaluation section of the solicitation cannot be read into the Instructions section to modify the language, therein requiring "identical" supplies.

The Navy contends that viewing the solicitation as a whole, the waiver of first article requirements was permitted if either identical or similar supplies had been previously accepted by the Government.

Clifton agrees with the Navy's position and also alleges that Target's protest is untimely since it was not filed within 10 days of bid opening when Target knew or should have known that Clifton's bid was lower based on first article waiver and that Clifton's alternate bid was based on "similar" supplies previously accepted by the Government.

Although Target knew that Clifton's alternate bid was lower and was based on having previously furnished "similar" rather than "identical" articles, Target could not know that the Navy would construe the terms of the solicitation different from Target's interpretation and consider Clifton's alternate bid until notice of the Navy's intent to do so. In a letter of November 16, 1981, to the contracting officer, Target requested to be advised whether the Navy intended to waive first article requirements for Clifton and, if such a waiver was granted, indicated an intent to protest. Before the Navy responded to the request for advice or took any adverse action, Target filed this protest with our Office. The protest is, therefore, timely under section 21.2(b)(2) of our Bid Protest Procedures (4 C.F.R. part 21 (1982)).

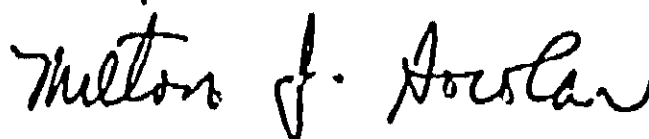
Although the first sentence of clause L0003.1 refers to "supplies identical to those called for in the schedule," the second sentence refers to "supplies identical or substantially identical," which has a broader definition than "identical" or "Chinese copies." As noted previously, clause M108 refers to supplies "identical or similar." While Target argues, in part, that this provision is "boiler plate" and of little effect in view of the specific language of clause L0003.1, we note that solicitations must be interpreted as a whole, construing them in a reasonable manner and, whenever possible, giving effect to each word, clause or sentence. Crown Transfer Company, B-202572, October 29, 1981, 81-2 CPD 366; Panuzio/Rees Associates, B-197516, November 26, 1980, 80-2 CPD 395.

Target also asserts that it knew that only one contractor had previously supplied the identical product to the Government and Target believed "that the first article waiver was intended to be solely for continued production by" that company. We note, however, that had the Navy intended to limit waiver of first article requirements to a particular company or companies, the Navy could have done so expressly by name. Cf. B-176526, November 8, 1972. That the Navy did not do so further evidences the expressed intent to waive first article requirements for any company which had previously supplied products "substantially identical" or "similar" to the particular range strobe kits solicited. In this connection, DAR § 1-1903(a) provides that "where one or more bidders or offerors may be eligible to have first article approval tests waived, the solicitation shall permit the submission of alternate bids," as was done here.

The language and format of the IFB, therefore, show that first article requirements might be waived for any bidder which previously furnished to the Government identical, substantially identical or similar products.

Target also contends that all bidders did not compete on the same basis. However, all bidders were allowed to submit alternate bids on the basis of waiver of first article testing. Target could have submitted an alternate bid even if it had doubts of its eligibility for waiver.

Since there has been no showing that waiver of first article requirements by the Navy was either arbitrary or capricious, we deny the protest.



Acting Comptroller General  
of the United States